

Fiscal Year 2012 Enforcement Policy

Septage Waste Program – Enforcement Policy:

Local Entity compliance and enforcement activities for the Septage Waste Program shall be administered in accordance with this policy to ensure that these basic principles are followed.

1. **Compliance and enforcement actions must be timely:** To be most effective, an action must occur promptly after the violation takes place or is discovered. A timely action not only sends a clear message to violators, but also limits the harm to the public health and the environmental harm that a given violation may cause. An action by the local entity shall be taken within one to five working days from the time that the violation came to the attention of the local entity.
2. **Compliance and enforcement actions must be appropriate to the violations alleged:** In deciding which compliance and enforcement action is the most appropriate response for a violation, consideration needs to be given to a number of factors. These factors include, but are not limited to, the violation's effect on program integrity; the severity and duration of the violation; any public health risk or resource damage caused by the violation; the compliance history of the violator; and the willfulness, negligence, and recalcitrance of the violator.
3. **Compliance and enforcement actions must be consistent for like violations:** Compliance and enforcement actions of the Local Entity must not be construed as arbitrary, capricious, or as an abuse of discretion. To this end, it is important that compliance and enforcement action be consistent and fair. Like violations of a given statute, rule, permit, or license should end in a similar result where circumstances are the same or comparable.

A consistent compliance and enforcement program provides the regulated community with the benefit of knowing what to expect from the Local Entity when violations occur. A consistent approach also ensures a level playing field for all regulated entities. Cases requiring an action that differs or appears to differ from past actions for like or similar violations need to be documented with material facts that account for the difference in the level of action taken.

4. **Compliance and enforcement action in response to repeat or continuing violations must be progressive in nature:** To ensure that violations are resolved as quickly and efficiently as possible, the Local Entity will use a progressive compliance program. Failures to comply with previous compliance and enforcement actions must subject the violator to progressively stronger actions.

Compliance Assistance:

Although this policy sets standards for carrying out compliance and enforcement responsibilities, it does not lessen the Local Entity's responsibility to foster compliance through compliance assistance activities. The DEQ believes that both activities – assistance and enforcement – have a justified place in Local Entity efforts. The goal of protecting and enhancing Michigan's environmental resources and public's health should be met through compliance assistance and enforcement.

Compliance Inspections:

The success of a strong septage waste program compliance and enforcement process is judged by the degree to which violations are detected and by the timeliness of achieving compliance. Based on the information obtained from compliance/annual inspections, the Local Entity is in the best position to determine what actions will have the greatest impact in ensuring that the environment and public health is protected. Every septage firm that the Local Entity oversees could benefit from frequent contact with the Local Entity. With frequent contacts the Local Entity could offer timely compliance assistance and solve problems before they become significant compliance or escalated enforcement issues. However, the Local Entity does not have the resources to provide that level of overview. Therefore, compliance inspection efforts must be planned to ensure the maximum impact on maintaining a strong rate of compliance.

Compliance Documents, Escalation, and Responsibilities

To facilitate a uniform and consistent Local Entity compliance and enforcement program, the Local Entity shall use a standard compliance escalation process and a common nomenclature for classifying documents issued in response to violations.

A Local Entity compliance document (Letter of Warning) is a written response to violations of statutes, rules, or licenses/permits. A compliance document shall contain the following information:

1. The legal authority and method that violations were discovered, e.g., an inspection, a review of submitted documents (applications, volume reports, or remedial action plans), or other compliance activity taken by Local Entity staff.
2. The statute, rule, or license/permit order condition that is being violated.

3. The action or omission by the person or entity that created the violation (i.e., the manner of the violation).
4. The date, if known, the violation occurred or was discovered (i.e., inspection date); the period of time, if known, during which the violation occurred; or whether the violation is ongoing.
5. A statement to take necessary actions to return to compliance and a date-certain or defined time period for these actions to be completed.
6. The consequences for not taking action to return to compliance.

Compliance documents, when issued, shall identify the stage of escalation that has been used to address the violation.

Practical Application of the Enforcement Policy

The following is a practical approach to septage waste enforcement. Violations will typically be found during the annual inspection of the septage waste vehicle and the disposal site(s) or when responding to a complaint call.

Major violations

A major violation is one that poses an immediate threat to the environment or public health. Examples include direct or indirect discharges into waters of the state (a violation of both part 117 and part 31). Waters of the state are defined as ditches, wetlands, creeks, rivers, or lakes. Other examples include direct or indirect discharge into a storm drain that discharges into waters of the state.

If your inspection reveals circumstances such as those described above, immediately call your local DEQ District Office or the Pollution Emergency Alerting System (PEAS) hotline at 800-292-4706 to report the incident.

Minor violations

A minor violation typically poses a reduced threat to the environment or public health. An example of a minor violation would be the land application of septage waste in a manner that causes pooling or ponding on the surface at a disposal site that has limited public access. Another example is the hauler who land applies septage waste at a site that does not have DEQ authorization for winter use when the soil is frozen.

A minor violation may also pose no immediate threat to the environment or public health. Examples include haulers who do not properly label their vehicles, have the correct DEQ seals on their vehicle, or have their septage waste licenses in

their vehicle. Other examples include not incorporating the septage waste on a disposal site within six hours and land applying septage waste at a rate that just exceeds the calculated agronomic application rate.

Minor violations can usually be remedied with a verbal warning followed up by an inspection letter. The local health department follow-up letter should clearly state the problem found during the inspection and establish a timeline for correction. All local health department letters should carbon copy the DEQ Septage Program Coordinator.

Escalated Enforcement.

Sometimes a septage firm continues practices that violate the septage law. Under these circumstances the local health department should escalate enforcement by doing a thorough inspection documenting the violation. This includes, but is not limited to, noting the section(s) of the law that were violated, completing the DEQ inspection checklist, taking photos (digital or film) of the violation (if applicable), and writing a Notice Letter that clearly documents the violation and sets timelines for compliance and remediation for the septage firm in question.

- When a NL is issued by the local health department, notice numbers shall be assigned as follows:
 - Notice Letters shall begin with the two letter prefix NL.
 - Notice Letter numbers should be determined according to the example below:
Example: NL-04-05-03-12DHD #4
NL = two letter prefix for type of compliance document
04 = month issued
05 = year issued
03 = total number of this type of compliance document issued to this facility on an accumulative basis.
12 = total number of this type of compliance document issued by the local health department for this fiscal year, October 1 through September 30.
- Special attention should be given to the accumulative basis and fiscal year basis digits. For example, if in September of 2005, District Health Department (DHD) No. 4 issued septage firm A its fourth Notice Letter and it was the 57th Notice Letter issued by DHD #4 for that fiscal year, the number would be NL-09-05-04-57DHD #4. If in October 2005, another Notice Letter was issued to septage firm A and it was the fourth Notice Letter issued in DHD #4 since October 1, the number would be NL-10-05-04DHD #4.
- At the local health department level it is necessary to keep track of the total number of compliance actions of a given type against a given septage firm.

This should be possible through the file record for that facility. A file review is necessary before preparing a given action to see if the history of the facility compliance performance warrants one level of action versus an escalated action. Also, it is necessary to keep track of the total number of compliance actions of a given type taken against septage firms during the fiscal year for that local health department. To compile this record and to provide for collection of up-to-date action summaries for the DEQ and other uses, a log of each type of compliance action should be maintained.

Referral to DEQ

While most enforcement matters can be corrected on the local level through education, informal meetings, or the issuance of enforcement documents (and inspection follow up), some can not. Under those circumstances an enforcement referral should be made to the DEQ.

Enforcement referrals to the DEQ should be made immediately (a call the same day the violation is noted and followed up in writing within five days) when the Local Entity determines that violations are severe (see major violations above) and when there is a lack of cooperation by the person responsible for the violation. It is expected that all identified violations will be responded to in accordance with established procedures. However, it is recognized that not all identified violations will rise to a priority to initiate or continue compliance and enforcement actions.

Remember, if you are not sure what to do, please call DEQ Septage Waste Program staff for guidance.